

**UNITED STATES OF AMERICA
FEDERAL MARITIME COMMISSION**

Direct Final Rule (79 *Fed. Reg.* 42986)

**COMMENTS OF UPS OCEAN FREIGHT SERVICES, INC., UPS EUROPE
SPRL, UPS ASIA GROUP PTE., LTD. AND UPS SUPPLY CHAIN SOLUTIONS,
INC. OPPOSING COMMISSION PROPOSAL TO ELIMINATE FEDERAL
REGISTER NOTICES REGARDING OTI STATUS**

UPS Ocean Freight Services, Inc., a licensed non-vessel operating common carrier (“NVOCC”) (License No. 016871N), UPS Europe SPRL, a registered foreign NVOCC (Org. No. 24173), UPS Asia Group Pte. Ltd., a registered foreign NVOCC (Org. No. 23718) and UPS Supply Chain Solutions, Inc., a licensed ocean freight forwarder (License No. 00275F) (collectively “UPS”) hereby comment upon and oppose the proposed direct final rule of the Federal Maritime Commission (“Commission”) published by Federal Register notice dated July 24, 2014, to eliminate Federal Register notices regarding licensing status of ocean transportation intermediaries (“OTIs”) in favor of reliance solely upon the Commission’s website.

Current Commission rules require Federal Register notice for both OTI license applications, 46 C.F.R. §515.12, and revocation or suspension of OTI licenses, 46 C.F.R. §515.16. UPS is deeply concerned that reliance solely upon a website, without the formal record and archiving functions of Federal Register notices, places the general shipping public, and licensed or registered OTIs in particular, at risk when making or accepting ocean freight bookings with shipper OTIs.

Carrier OTIs receive substantial volumes of booking requests from shipper OTIs on a daily basis. OTIs have to be extremely careful in such dealings. Section 10 of the Shipping Act, 46 U.S.C. §41104(11) and (12) make it unlawful for a carrier to:

(11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title; or

(12) knowingly and willfully enter into a service contract with an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title, or with an affiliate of such an ocean transportation intermediary.

The Commission's regulations at 46 C.F.R. §§515.31(b) and 515.32(d) also prohibit NVOCCs and forwarders from dealing with unlicensed and unbonded OTIs. Penalties for such violations can include fines or even tariff suspension.

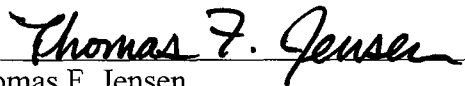
As the Commission is aware, it is often very difficult to tell whether a shipper is shipping for its own account or *de facto* acting as an NVOCC. Even if the carrier OTI requests that the shipper certify its status, or if documentation presented by the shipper OTI indicates the shipper is the beneficial cargo owner or represents that it has a license or does not need one, there are always challenging cases where the carrier OTI must verify the shipper's status by reliable official means.

While the Commission's current website OTI listing is helpful, it does not appear to be an officially dispositive resource like the Federal Register. The Federal Register has the advantage of being an official archive that can be researched to determine exactly the date on which the Commission took or published official notice of an action with respect to the status of an OTI. Thus if a carrier or forwarder OTI is challenged by the Commission staff with respect to lawfulness of a particular booking accepted from a shipper OTI, the exact date of such shipper OTI's licensing or disqualification can be established with reference to a source of which judicial notice will be taken.

Conversely, the Commission's website may show the name of an OTI among the *bona fide* NVOCCs or forwarders as of a point in time, but then later, perhaps at the point the lawfulness of the booking is subsequently challenged, the name will be absent from the current listings without any record of when it was removed. This leaves the carrier NVOCC or forwarder that dealt with the now-disqualified OTI at risk of being unable to defend itself with clear evidence. While these circumstances may not be frequent, the results could be disastrous.

Accordingly, UPS strongly urges that the Commission continue its reliance on the Federal Register as the source for notice of official actions regarding OTI licensing, bonding and status. Alternatively, before the Commission abandons the Federal Register as its reliable source, the Commission should develop and institute procedures such that the website includes a daily log of additions and deletions that preserves the integrity of such notices for subsequent research as to the official status of OTIs, and provides carriers and forwarders with a data source upon which they may safely rely in all instances.

Respectfully submitted,
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